

DOCKET NOS. 2003-326-C AND 2003-327-C – ORDER NO. 2003-728

IN RE: Docket No. 2003-326-C – Analysis of) ORDER MAKING[✓]
Continued Availability of Unbundled Local) ALL ENTITIES THAT
Switching for Mass Market Customers) HAVE A CERTIFICATE
Pursuant to the Federal Communication) TO OPERATE AS A
Commission’s Triennial Review Order) TELEPHONE UTILITY
) IN SOUTH CAROLINA
and) PARTIES TO THESE
) PROCEEDINGS FOR
Docket No. 2003-327-C – Continued) THE LIMITED PURPOSE
Availability of Unbundled High Capacity) OF DISCOVERY
Loops at Certain Locations and Unbundled)
High Capacity Transport on Certain Routes)
Pursuant to the Federal Communication)
Commission’s Triennial Review Order)

On August 21, 2003, the Federal Communications Commission ("FCC") released its *Triennial Review Order*.¹ The FCC directed the Commission to apply various triggers

¹ Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, *In the Matter of Review of the Section 251 Unbundling Obligations of*

and other analyses developed by the FCC to determine the extent to which certain loop, transport, and switching facilities will remain unbundled network elements ("UNEs") in South Carolina. *See, e.g., Triennial Review Order* at ¶¶ 339, 417, 488, 527. Applying these triggers and other analyses requires the Commission to consider a great deal of carrier-specific information at a "granular" level including, without limitation: the number of competing carriers serving specific customer locations with their own loop transmission facilities at certain loop capacity levels (¶329); the number of competing carriers that have deployed transmission facilities to specific customer locations and that are offering alternative loop facilities to competing carriers on a wholesale basis at the same capacity level (¶329); the number of competing carriers that have deployed non-incumbent LEC transport facilities along a specific route (¶400); the number of alternative transport providers immediately capable and willing to provide competing carriers with transport at specific capacity along a given route between incumbent LEC switches or wire centers (¶400); the number of competing carriers serving mass market customers in a particular market with the use of their own switches (¶501); and the number of competing carriers that offer wholesale switching service for a particular market using their own switches (¶504). The Commission is expected to apply these various triggers and other analysis and make various findings within nine months of the effective date of the *Triennial Review Order*. *See Id.*, at ¶¶ 339, 417, 488, 527.

Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; and Deployment of Wireline Service Offering Advanced Telecommunications Capability, 2003 WL 22175730 (F.C.C.), 30 Communications Reg. (P&F) 1 (Rel. August 21, 2003).

In order to resolve these dockets, the Commission will want the record in these proceedings to include as much relevant information as possible. While obtaining such information from parties that have intervened in these proceedings should be relatively straight-forward, obtaining information from entities that elect not to participate may be more difficult. Non-parties, for example, might object to, or even ignore, interrogatories and requests for production of documents served by parties. *See, e.g., Lehman v. Kornblau*, 206 F.R.D. 345, 346 (E.D.N.Y. 2001) ("Any interrogatories or requests for production of documents served on non-parties are a nullity.").

Clearly, the Commission's Staff could draft questions designed to elicit relevant information, serve these questions on all certificated telephone utilities, and initiate appropriate action against any telephone utilities that were not responsive. Additionally, the Staff could issue subpoenas requested by the parties, serve these subpoenas on non-party telephone utilities, and initiate appropriate action against any telephone utilities that were not responsive. Either approach, however, undoubtedly would place a considerable burden on the Commission and its Staff.

To avoid these burdens, the Commission finds that all entities that have a certificate to operate as a telephone utility in South Carolina should be made parties to these proceedings for the limited purpose of discovery. This will allow the parties of record to conduct discovery on other telephone utilities that have elected not to intervene. These other telephone utilities would not have to otherwise participate in these proceedings if they choose not to do so. The Commission finds that this approach will be very helpful in meeting the tight deadlines the FCC's Triennial Review Order has

imposed on the Commission and the parties in these proceedings, and it will be significantly less burdensome on the Commission and its Staff than other possible approaches. The Commission finds that it is authorized by law (including without limitation S.C. Code Ann. §§ 58-9-780, 58-9-370, 58-9-1070, and 58-9-790) to take this approach under these circumstances.

Accordingly, BellSouth's Motion is granted, and the Commission hereby orders that all entities that have a certificate to operate as a telephone utility in South Carolina are parties to these proceedings for the limited purpose of discovery.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn, Chairman

ATTEST:



Bruce F. Duke, Deputy Executive Director

(SEAL)